



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

March 27, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Clement Krug**
Tax Registry No. 932866
40 Precinct
Disciplinary Case No. 2015-13814

Police Officer Russell Lewis
Tax Registry No. 927082
40 Precinct
Disciplinary Case Nos. 2015-13813 & 2016-15520

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on August 16, 2016, and were charged with the following:

DISCIPLINARY CASE NO. 2015-13814

1. Said Police Officer Clement Krug, while assigned to the 40th Precinct, on or about June 29, 2014, did fail and neglect to prepare a Complaint Report Worksheet upon responding to a radio transmission of a robbery and speaking to the complainant.

**Operations Order No. 5 of 2012,
Page 1, Paragraph 2(a)**

**PROPER PRELIMINARY
INVESTIGATIONS OF
COMPLAINTS, COMPLAINT
RECORDING AND ACCURATE
CLASSIFICATION OF
COMPLAINTS**

P.G. 207-07, Page 1, Paragraph 3

**PRELIMINARY
INVESTIGATION OF
COMPLAINTS**

DISCIPLINARY CASE NO. 2015-13813

1. Said Police Officer Russel[l] Lewis, while assigned to the 40th Precinct, on or about June 29, 2014, did fail and neglect to prepare a Complaint Report Worksheet upon responding to a radio transmission of a robbery and speaking to the complainant.

**Operations Order No. 5 of 2012,
Page 1, Paragraph 2(a)**

**PROPER PRELIMINARY
INVESTIGATIONS OF
COMPLAINTS, COMPLAINT
RECORDING AND ACCURATE
CLASSIFICATION OF
COMPLAINTS**

P.G. 207-07, Page 1, Paragraph 3

**PRELIMINARY
INVESTIGATION OF
COMPLAINTS**

DISCIPLINARY CASE NO. 2016-15520

1. Said Police Officer Russell Lewis, while on duty and assigned to the 40th Precinct, on or about June 14, 2015, did fail and neglect to keep a hospitalized prisoner under constant observation at Lincoln Medical Center. *(As amended)*

P.G. 210-02, Page 3, Paragraph 22

HOSPITALIZED PRISONERS

2. Said Police Officer Russell Lewis, while on duty and assigned to the 40th Precinct, on or about June 14, 2015, did fail and neglect to wear his duty belt firmly around his waist, as required.

P.G. 204-09, Page 3, Paragraph 10

**REQUIRED FIREARMS/
EQUIPMENT**

In a Memorandum dated November 16, 2016, Assistant Deputy Commissioner David S. Weisel found Police Officer Clement Krug Guilty of the sole Specification in Disciplinary Case No. 2015-13814. Police Officer Russell Lewis was found Guilty of the sole Specification in Disciplinary Case No. 2015-13813 and Guilty of both Specifications in Disciplinary Case No. 2016-15520. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalties for both Police Officer Krug and Police Officer Lewis.

I have considered the totality of the issues and circumstances in Disciplinary Case Nos. 2015-13814 and 2015-13813 and deem that lesser penalties are warranted. There is nothing in the record suggesting that the Respondents' actions were not performed on a good faith basis. Therefore, Respondents are to forfeit two (2) Vacation days for failing to prepare a Complaint Report Worksheet after responding to a robbery.

However, having considered the totality of the circumstances in Disciplinary Case No. 2016-15520, I deem that a higher penalty is warranted. Police Officer Lewis will forfeit fifteen (15) vacation days for failing to remain attentive while guarding a hospitalized prisoner.

Accordingly, Police Officer Krug will forfeit two (2) vacation days and Police Officer Lewis will forfeit seventeen (17) vacation days.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

November 16, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Clement Krug
Tax Registry No. 932866
40 Precinct
Disciplinary Case No. 2015-13814

Police Officer Russell Lewis
Tax Registry No. 927082
40 Precinct
Disciplinary Case Nos. 2015-13813 & 2016-15520

Charges and Specifications:

Disciplinary Case No. 2015-13814

1. Said Police Officer Clement Krug, while assigned to the 40th Precinct, on or about June 29, 2014, did fail and neglect to prepare a Complaint Report Worksheet upon responding to a radio transmission of a robbery and speaking to the complainant.
Operations Order #5 of 2012, Page 1, Paragraph 2(a) –
PROPER PRELIMINARY INVESTIGATIONS OF COMPLAINTS,
COMPLAINT RECORDING AND ACCURATE CLASSIFICATION OF
COMPLAINTS
P.G. 207-07, Page 1, Paragraph 3 – PRELIMINARY INVESTIGATION OF
COMPLAINTS

Disciplinary Case No. 2015-13813

1. Said Police Officer Russell Lewis, while assigned to the 40th Precinct, on or about June 29, 2014, did fail and neglect to prepare a Complaint Report Worksheet upon responding to a radio transmission of a robbery and speaking to the complainant.
Operations Order #5 of 2012, Page 1, Paragraph 2(a) –
PROPER PRELIMINARY INVESTIGATIONS OF COMPLAINTS,
COMPLAINT RECORDING AND ACCURATE CLASSIFICATION OF
COMPLAINTS
P.G. 207-07, Page 1, Paragraph 3 – PRELIMINARY INVESTIGATION OF
COMPLAINTS

Disciplinary Case No. 2016-15520

1. Said Police Officer Russell Lewis, while on duty and assigned to the 40th Precinct, on or about June 14, 2015, did fail and neglect to keep a hospitalized prisoner under constant observation at Lincoln Medical Center. (*As amended*)
P.G. 210-02, Page 3, Paragraph 22 – HOSPITALIZED PRISONERS
2. Said Police Officer Russell Lewis, while on duty and assigned to the 40th Precinct, on or about June 14, 2015, did fail and neglect to wear his duty belt firmly around his waist, as required.
P.G. 204-09, Page 3, Paragraph 10 – REQUIRED FIREARMS/EQUIPMENT

Appearances:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For Respondents: John P. Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:
August 16, 2016

Decision:
Guilty

Trial Commissioner:
ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before the Court on August 16, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges in Case Nos. 2015-13813 and 2015-13814. The Department called Sergeant Brian Natoli as a witness and Respondents testified on their own behalf. Respondent Lewis pleaded Guilty to the charges in Case No. 2016-15520 and testified in mitigation of the penalty. A stenographic

transcript of the hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondents Guilty in Case Nos. 2015-13813 and 2015-13814. Respondent, having pleaded Guilty to the charges in Case No. 2016-15520, is found Guilty in that matter.

FINDINGS AND ANALYSIS

Case Nos. 2015-13813 & 2015-13814

The charges against Respondents here arise out of an investigation conducted by the Quality Assurance Division. It was undisputed that in August 2014, QAD received an anonymous letter alleging that the commanding officer of the 40 Precinct was downgrading crimes intentionally. The commanding officer arrived in April 2014. QAD noted that the 40 Precinct, on paper at least, had been leading the City by August 2014 in crime reduction that year, with an approximately 30% decrease. QAD looked at over 1,500 complaint reports from the summer of 2014 in the categories most susceptible to having been downgraded: lost property, petit larceny, misdemeanor assault, criminal mischief and criminal trespass. QAD also reviewed 911 call records for robberies and burglaries in progress, and past robberies and burglaries, the types of calls often subject to downgrading (Tr. 10-12, 21-27, 40-42).

It was further undisputed that one of the 911 calls involved Respondents. They responded to a 911 call in which the victim, identified only as "Mr. [REDACTED]" stated that he was robbed of his backpack, which contained the culinary knives he used for work. Respondents and other officers canvassed for the suspects and the backpack. Only the backpack, devoid of its

contents, was found. [REDACTED] took the backpack and left, not wanting to have any more involvement with the process. It was undisputed that Respondents did not file a complaint report (Tr. 27-30). The essence of this case is whether the Patrol Guide, and specifically an Operations Order promulgated in 2012, nevertheless required them to file a complaint report.

Sergeant Brian Natoli was the lead investigator in the matter. He testified that one of the 911 call reports indicated on June 29, 2014, at approximately 0400 hours, [REDACTED] called and stated that he had been robbed by two or three individuals of his backpack in the vicinity of 149th Street and Concord Avenue in the Bronx (see Dept. Exs. 1 & 2, transcripts). Natoli noted that [REDACTED] needed a Spanish interpreter to speak to the 911 call taker. He sustained an injury to the face. Respondents, assigned to the 40 Precinct, responded to [REDACTED]'s call but were limited in their ability to speak to [REDACTED] due to the language barrier (Tr. 11-17, 27-28).

Natoli conducted official Department interviews with both Respondents. They stated that they responded to the scene of a strong-arm robbery and confirmed that there was a language barrier. They nevertheless were able to obtain some information through a Spanish-speaking officer and stated that the complainant was happy with finding some of his property and did not want a report taken. They did not file a complaint report (Tr. 12, 17-18, 28-30, 33, 38).

Natoli testified that both Respondents agreed they were aware of Operations Order Number 5 of 2012 (Tr. 18). The Order begins by noting that "[p]roper documentation of crimes and accurate classification of complaints is crucial to the Department's crime fighting strategies" Page 1, (1). As such, officers must take a complaint report when they are made aware that a complainant has been the victim of a crime. A complainant's willingness to follow through on an investigation or prosecute an offender is irrelevant. The complaint report still must be taken. Page 1, (2)(a),(f)(2)(3). The Order nonetheless recognizes that an uncooperative or unwilling

complainant presents a logistical problem. Thus, when a complainant "refuses" to provide pedigree information, the officer is to contact the patrol supervisor and the supervisor is to interview the complainant. In the end, if the elements of a crime are established but the complainant still did not provide pedigree, "the patrol supervisor will direct the initial member of the service who encountered the complainant" to prepare a complaint report and classify the crime accordingly. The complainant is to be listed as PSNY, i.e., the People of the State of New York. Page 2, (a)-(c)(1).

Natoli testified that Respondents told him they did not recall if a supervisor was on the scene. They did not say that they requested a supervisor either. Natoli conceded that a supervisor would have been expected to respond on her own to a call of a robbery in progress, so it was possible a supervisor was on the scene regardless. The radio transmissions of the central radio dispatcher, however, made no mention of a supervisor responding or on the scene (Tr. 18, 30-32).

Natoli testified that others, including the commanding officer, were disciplined in some way as a result of the QAD investigation (Tr. 25-26).

Respondent Krug, currently assigned as neighborhood coordination officer in the 40 Precinct, was assigned to patrol in 2014. He testified that he remembered responding with Respondent Lewis to 149th Street and Concord Avenue for a robbery in progress, and canvassing with the complainant. There was a language barrier. Respondent Krug wrote in his memo book that the property taken consisted of knives inside a bag. The canvass was unsuccessful except for the bag. Respondent Krug agreed that he and Respondent Lewis did not file a complaint report and finalized the job as 10-90Y, unnecessary, because the complainant was happy with the recovery of his bag (Tr. 46-53).

Respondent Krug agreed that he was aware of the Operations Order. He believed the Order's instruction that a complaint report was to be taken even with an uncooperative complainant was "at the direction of the supervisor" (Tr. 52-53).

Respondent Lewis recalled more about the incident. He testified that he and Respondent Krug requested a Spanish-speaking officer, although the complainant did speak a little English. That officer was the driver for Lieutenant Perry Brijmohan, the platoon commander. The interpreting officer let Respondents know that the complainant was the victim of a strong-arm robbery and that his culinary knives were stolen. There were two male perpetrators and the victim was punched in the eye. According to Respondent Lewis, the complainant specifically said, "I don't want to do a report" once he recovered his essentially empty bag. Respondent Lewis also described it as the officers asking the complainant several times if he wanted to make a report and the complainant said no. Respondents informed Brijmohan of this but the lieutenant did not respond and gave no direction. The complainant went on his way and Respondents finalized the job as 90Y because the complainant did not want to do a report (Tr. 60-67, 73-79, 86).

Respondent Lewis also agreed that he was aware of Operations Order 5 of 2012. He conceded that the Order required a complaint report even if the complainant was uncooperative (Tr. 78-79).

The determination of this matter rests on the interpretation of the Operations Order. The factual circumstances do not neatly match what is laid out in the Order. The complainant did not "refuse" to give his pedigree information, but instead stated that he did not want to do a report and left. Respondents did not contact the patrol supervisor, but Respondent Lewis testified that the platoon commander was at the scene as a result of being driven by the Spanish-speaking

officer Respondents did request. Although the QAD investigator testified that radio dispatch records did not have any notation of a supervisor responding to the scene, this is not conclusive because a supervisor could have responded without informing the central radio dispatcher.

The Order should nevertheless be read broadly so as to effectuate its purpose: true and accurate complaint reporting and crime classification are essential to the Department's crime-fighting strategies. Respondents' counsel argued on summation that the Department, "in its rush to and its blindness to numbers just wanted some type of statistic. They wanted a number they could use that they could plug into some type of statistical analysis to create an answer that they could give to the public to assure them that the police are doing their job" (Tr. 91). That is exactly the point. The "numbers" that counsel derides are necessary to ensure that the Department has an accurate count and description of the crimes occurring at any given time in any given part of the City. With [REDACTED]'s complaint unrecorded, it appeared on paper that there was one less strong-arm robbery in the 40 Precinct than there actually was. This kind of artificial lowering of crime was exactly what the anonymous letter that started the QAD investigation was referring to, even if that was not the officers' intent and there is no allegation that it was.

Here, the complainant effectively refused to provide pedigree information and a supervisor might have been informed. At least according to Respondent Lewis, a supervisor responded but did not say anything when Respondents told him what the complainant wanted to do. Respondents' argument is that because the Operations Order says the supervisor "will direct the initial member of the service who encountered the complainant" to prepare a complaint report, and there was no "direction," Respondents did not violate the Order (Tr. 91-93).

The problem with Respondents' argument is that the Order does not give the supervisor discretion. It says "will direct." The process is self-effectuating. If no supervisor had shown up,

Respondents could not escape liability simply by claiming that they received no direction. They would have known what to do from the Operations Order. So too should they have known what to do here, where the supervisor allegedly stared blankly and silently after being informed of the circumstances. Because Respondents were aware that the Order mandated a complaint report here, regardless of the personal wishes of the complainant, they are found Guilty.

Case No. 2016-15520

In this matter, Respondent Lewis pleaded Guilty and testified in mitigation of the penalty. He testified that on June 14, 2015, he was assigned to guard a hospitalized prisoner at Lincoln Hospital. He relieved the previous officer and checked on the prisoner. According to Respondent Lewis, the prisoner was in a vegetative state. He was intubated and had compression devices on his legs to prevent thrombosis. He never saw the person move and heard no noise from him other than breathing. Respondent Lewis believed that the prisoner had been hospitalized for some time, as this was not the first day officers were sent to guard him (Tr. 68-70, 80, 88).

Respondent Lewis conceded that he was supposed to secure the prisoner to the bed. He did not do so, however, due to the patient's condition. He sat outside the room about ten feet from the patient in a large reclining padded chair, the type provided for visitors in a patient's room. He could see the prisoner from this vantage point. Respondent Lewis admitted that he took off his duty belt to be more comfortable, but kept his firearm secured to his body in a pancake holster. Respondent Lewis admitted that he fell asleep, but only for a few seconds. At that time a supervisor came to inspect him and found him dozing. He apologized to her and admitted to the Court that he had been inattentive (Tr. 70-73, 80-84, 86-87).

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Krug was appointed to the Department on July 1, 2003, and Respondent Lewis was appointed on September 29, 2000. Information from their personnel records that was considered in making these penalty recommendations is contained in attached confidential memoranda.

The Department's recommendation of the forfeiture of 10 vacation days for each Respondent on the complaint report case (Tr. 98-99) is well supported by precedent. See Case Nos. 2015-13776 & -13777 (Oct. 6, 2016); Case No. 2013-10945 (Oct. 14, 2014). Therefore, the Court recommends that Respondent Krug receive a penalty of the forfeiture of **10 vacation days**.

Respondent Lewis is subject to an additional penalty because of the hospitalized prisoner matter. The Department recommended an additional 25 vacation days, for a total of 35 vacation days. Their argument was that the misconduct of falling asleep was aggravated by the facts that the patient was not shackled and Respondent Lewis removed his duty belt (Tr. 99-100).

The Department's recommendation is excessive in light of the facts. While officers are required to be alert at all times while watching a prisoner, the uncontested facts testified to by Respondent Lewis indicated that this prisoner was not going anywhere. The prisoner did not have police restraints, but was essentially shackled by the intubation and the leg compression devices. For similar reasons, while a serious error, Respondent Lewis's removal of his belt did not aggravate the misconduct in the context of this case.

Cases of falling asleep while guarding hospitalized prisoners typically result in penalties of around 15 days, even when the prisoner escapes. See, e.g., Case No. 2011-5273 (Aug. 28, 2012) (15 vacation days for officer observed sleeping for approximately ten minutes). In fact, a

penalty of 10 days has been found appropriate for dozing officers. See Case No. 78793/03 (Aug. 27, 2004).

In light of Respondent Lewis's excellent work history and the lack of any escape by the prisoner, the tribunal finds that a penalty of 10 vacation days is appropriate here. Accordingly, the Court recommends that Respondent Lewis receive a penalty of the forfeiture of **20 vacation days** to cover both cases.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CLEMENT KRUG
TAX REGISTRY NO. 932866
DISCIPLINARY CASE NO. 2015-13814

On his last three annual performance evaluations, Respondent Krug received an overall rating of 4.0 "Highly Competent." He has been awarded three medals for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]

From November 16, 2009, to June 3, 2011, Respondent Krug was on Level 1 Force Monitoring for having three or more CCRB complaints in one year.

Respondent Krug has no prior formal disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RUSSELL LEWIS
TAX REGISTRY NO. 927082
DISCIPLINARY CASE NOS. 2015-13813 & 2016-15520

On his last three annual performance evaluations, Respondent Lewis received an overall rating of 4.0 "Highly Competent." He has been awarded two medals for Meritorious Police Duty. [REDACTED]

Respondent Lewis has no prior formal disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials